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FIFTH DIVISION
December 30, 2011

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

MERS/U.S. Bank, et. al.,)	Appeal from the
)	Circuit Court of
Plaintiffs-Appellees,)	Cook County.
)	
v.)	No. 08 CH 33616
)	
MONZELLA YOHANUS JOHNSON, et al.,)	Honorable
)	Pamela Hughes-
)	Gillespie,
Defendants-Appellants.)	Judge Presiding.

JUSTICE HOWSE delivered the judgment of the court.
Presiding Justice Epstein and Justice Joseph Gordon
concurred in the judgment.

ORDER

HELD: Because defendants' section 2-1401 emergency petition ultimately did not seek to challenge a final order previously entered by the trial court, the court did not err in striking the motion.

¶ 1 Defendants Monzella Yohanus Johnson and Marcia Essie Johnson appeal from the trial court's order striking their section 2-1401 (735 ILCS 5/2-1401 (West 2010)) "emergency" petition to vacate a

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prior foreclosure judgment the court entered in June 2009. For the reasons that follow, we affirm the trial court's order.

¶ 2 BACKGROUND

¶ 3 The record reflects defendants defaulted on a \$420,000 mortgage shortly after it was issued by New Century Mortgage on August 17, 2006. New Century Mortgage designated Mortgage Electronic Registration Systems, Inc. (MERS) as nominee and mortgagee. A foreclosure action was subsequently initiated by MERS against defendants. On June 3, 2009, MERS filed a motion with the trial court to substitute U.S. Bank National Association (U.S. Bank) as plaintiff in the foreclosure action and enter a default judgment of foreclosure against both defendants. On the same date, the trial court allowed the substitution and entered a default order granting a judgment of foreclosure against the mortgaged property. The defendants filed a motion to vacate the default order on September 9, 2009, which was denied by the trial court.

¶ 4 The property was sold for \$471,863.73 at a foreclosure sale on November 3, 2009. Defendants filed two appeals with this court--the first on September 23, 2009, and the second on December 30, 2009--contending we should vacate the foreclosure judgment. Both appeals were denied by this court on jurisdictional grounds because no final and appealable order had

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been entered by the trial court. The trial court entered a final order approving the foreclosure sale on February 26, 2010.

¶ 5 Defendants filed a motion to vacate the sale and the foreclosure judgment on March 24, 2010. The trial court vacated both the sale and the foreclosure judgment on June 3, 2010, finding the affidavit presented by plaintiff to support the foreclosure judgment was "wholly insufficient." Defendants were then granted 14 days to file an answer to plaintiff's amended complaint. The court held "neither party shall file any pleading without prior leave of court." Plaintiff filed a new affidavit in support of its amended complaint.

¶ 6 The trial court struck defendants' answer to the amended complaint on September 8, 2010, but granted defendants leave to file a section 2-619 (735 ILCS 5/2-619 (West 2010)) motion to dismiss. Defendants instead filed an "emergency petition" under section 2-1401 of the Illinois Code of Civil Procedure (Code) (735 ILCS 5/2-1401 (West 2010)), alleging the June 2009 judgment of foreclosure was a nullity, which caused the trial court to lose subject matter jurisdiction over the matter once the court vacated its prior judgment based on the insufficient affidavit. Following a hearing, the trial court struck defendants' 2-1401 petition and granted plaintiff the right to re-file its summary judgment motion with the new affidavit in support.

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¶ 7 Defendants appeal from the court's October 2010 order. No Rule 304(a) language was included in that order by the trial court to make it final and appealable. Ill. S. Ct. R. 305(a) (eff. Jan. 1, 2006).

¶ 8 ANALYSIS

¶ 9 Defendants, who are representing themselves *pro se* in this appeal, essentially contend the trial court erred in striking their section 2-1401 emergency petition.

¶ 10 Initially, plaintiff counters we should dismiss this appeal because we have no jurisdiction to consider the issue. In support, plaintiff notes decisions reached during a foreclosure action are not "final and appealable until the court enters an order approving the sale and directing the distribution."

Mortgage Electronic Registration Systems, Inc. v. Barnes, 406 Ill. App. 3d 1, 4 (2010). Accordingly, plaintiff contends the October 2010 order is not an appealable final judgment under any of our supreme court rules. Plaintiff also contends the order cannot be properly appealed under our supreme court rules governing interlocutory appeals.

¶ 11 We note, however, that Rule 304(b)(3) provides "[a] judgment or order granting or denying any relief prayed in a petition under section 2-1401 of the Code of Civil Procedure" is appealable without express Rule 304(a) language being included in

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the order. Ill. S. Ct. R. 304(b)(3) (eff. Jan. 1, 2006).

Because the filing of a section 2-1401 petition is considered a new proceeding, not a continuation of the old one, a circuit court's ruling on the motion is deemed a final order and may be immediately reviewed under Rule 304(b)(3). *Sarkissan v. Chicago Board of Education*, 201 Ill. 2d 92, 101-02 (2002).

¶ 12 We review *de novo* a trial court's judgment with regard to a section 2-1401 petition requesting relief based on an allegation that a prior judgment is void. *Protein Partners, LLP v. Lincoln Provisions, Inc.*, 407 Ill. App. 3d 709, 716 (2010). Although we recognize defendants represented themselves *pro se* during the proceedings below, we note "*pro se* litigants are presumed to have full knowledge of applicable court rules and procedures." *Steinbrecher v. Steinbrecher*, 197 Ill. 2d 514, 528 (2001).

¶ 13 Jurisdiction aside, we ultimately find section 2-1401 of the Code, which is intended to provide relief from final orders and judgments after 30 days from entry thereof, is simply not applicable here. See 735 ILCS 5/2-1401 (West 2010); *Barnes*, 406 Ill. App. 3d at 4.

¶ 14 When defendants filed their "emergency" 2-1401 petition, the June 2009 foreclosure judgment and the February 2010 final order approving the foreclosure sale had already been vacated by the trial court's June 2010 order. The court's decision to vacate

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the June 2009 foreclosure judgment and subsequent foreclosure sale was actually based on one of the issues defendants raise here, namely that the affidavit plaintiff was required to file in order to support the foreclosure judgment was "wholly insufficient." No other foreclosure judgment or final order disposing of the matter has been entered by the trial court in this case. Moreover, a foreclosure judgment is not in and of itself a final order subject to attack under section 2-1401. *Barnes*, 406 Ill. App. 3d at 4. Simply put, there was no remaining final judgment to attack when defendants filed their section 2-1401 petition with the court in September 2010.

¶ 15 Accordingly, we find the trial court did not err in striking the petition. See *Id.*

¶ 16 CONCLUSION

¶ 17 We affirm the trial court's order.

¶ 18 Affirmed.